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Report of the International Criminal Court

Report of the International Criminal Court

Note by the Secretary-General

The report of the International Criminal Court on its activities for 2011/12 is submitted herewith to the General Assembly in accordance with article 6 of the Relationship Agreement between the United Nations and the International Criminal Court and paragraph 19 of General Assembly resolution 66/262.

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Report of the International Criminal Court to the United Nations for 2011/12

Summary

The present report, covering the period from 1 August 2011 to 31 July 2012, is the eighth annual report of the International Criminal Court submitted to the United Nations.

The Court made significant progress during the reporting period, including: the issuance of its first judgement and sentence; one new case at the confirmation of charges phase; two new cases in the trial phase; and four new arrest warrants. The number of States parties to the Court's founding treaty, the Rome Statute, increased from 115 to 121. The Court celebrated its tenth anniversary on 1 July 2012, which marked 10 years since the entry into force of its Statute.

The Court issued its first judgement, in the case of *The Prosecutor v. Thomas Lubanga Dyilo*, on 14 March 2012. Mr. Lubanga was sentenced to 14 years' imprisonment on 10 July 2012. The judgement and the sentence are subject to appeal. The Court also completed the trial in its second case, *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, on 23 May 2012. The Chamber is now in deliberation.

In the trial of Jean-Pierre Bemba Gombo, the presentation of defence evidence is set to begin on 14 August 2012. In the trial of Abdallah Banda Abakaer Nourain and Saleh Mohammed Jerbo Jamus, the Chamber is to decide whether to grant the temporary stay of proceedings requested by the defence. In the situation in Kenya, charges were confirmed against four individuals and rejected against two persons.

Pursuant to the arrest warrant issued against Laurent Gbagbo on 23 November 2011, the authorities of Côte d'Ivoire surrendered him on 30 November 2011. His initial appearance took place on 5 December 2011.

In addition to the arrest warrant against Mr. Gbagbo, three new arrest warrants were issued, two initial warrants against Abdel Raheem Muhammad Hussein and Sylvestre Mudacumura, and a second arrest warrant against Bosco Ntaganda. Requests for arrest and surrender issued by the Court are outstanding against 12 individuals.

Saif Al-Islam Gaddafi was arrested by the Libyan authorities on 19 November 2011. His transfer was postponed until the Pre-Trial Chamber rules on the admissibility challenge lodged by the Libyan authorities. The Court faced an unprecedented crisis with the detention of four staff members during a mission conducted to meet Saif Al-Islam Gaddafi.

There are seven situations under investigation before the Court. On 18 July 2012, the Prosecutor was referred the situation in Mali, which brings the number of preliminary examinations conducted by the Office of the Prosecutor to eight. With regard to Palestine, the Prosecutor concluded on 3 April 2012 that the declaration lodged by the Palestinian National Authority did not meet the statutory requirements.

The Court continues to benefit from the support of its States parties and of international and regional organizations, including the United Nations. It also receives valuable ad hoc assistance from States which are not party to its Statute. After 10 years in existence, the Court needs strong political support in order to fulfil its mandate. This includes the implementation of the Court's requests for cooperation, in particular regarding the outstanding arrest warrants and the identification and freezing of assets, the allocation of adequate resources, public and diplomatic support for the Court's activities and other forms of assistance, especially regarding the protection of victims and witnesses.

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I. Introduction

1. The present report, covering the period from 1 August 2011 to 31 July 2012, is the eighth annual report of the International Criminal Court submitted to the United Nations in accordance with article 6 of the Relationship Agreement between the United Nations and the International Criminal Court.[1]

2. The Court was created by an international treaty, the Rome Statute of the International Criminal Court,[2] which was adopted on 17 July 1998 and entered into force on 1 July 2002. During the reporting period, Cape Verde, Guatemala, Maldives, the Philippines and Vanuatu deposited instruments of ratification or accession, resulting in 121 States having ratified or acceded to the Rome Statute. In addition to these States parties, 32 countries have signed but not ratified the Rome Statute.

3. In carrying out its functions, the Court relies on the cooperation of States, international organizations and civil society in accordance with the Rome Statute and international agreements concluded by the Court. Areas where the Court requires cooperation from States include: preliminary examinations; investigations; the arrest and surrender of accused persons; asset tracking and freezing; victim and witness protection; provisional release; the enforcement of sentences; the execution of the Court's decisions and orders; and public and diplomatic support.

4. The Court is independent from, but has close historical, legal and operational ties to, the United Nations. The relationship between the Court and the United Nations is governed by the relevant provisions of the Rome Statute as well as by the Relationship Agreement between the Court and the United Nations and other subsidiary agreements.

II. Judicial proceedings

5. During the reporting period, the Court continued its investigations in the six situations of which it was already seized: the Central African Republic, Darfur (the Sudan), the Democratic Republic of the Congo, Kenya, Libya and Uganda.

6. On 3 October 2011, Pre-Trial Chamber III authorized the Prosecutor to start an investigation in Côte d'Ivoire with respect to crimes committed since 28 November 2010 and also with respect to continuing crimes insofar as those crimes were part of the context of the ongoing situation in the country. On 22 February 2012, Pre-Trial Chamber III expanded its authorization to include crimes allegedly committed between 19 September 2002 and 28 November 2010.

7. The cases in which there were judicial developments during the reporting period are detailed below.

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[1] United Nations, *Treaty Series*, vol. 2283, No. 1272.

[2] Ibid., vol. 2187, No. 38544.

A. *The Prosecutor v. Thomas Lubanga Dyilo* (situation in the Democratic Republic of the Congo)

8. In addition to the written submissions received between 1 June and 15 August 2011, the oral closing statements of the prosecution, the defence and the legal representatives of victims were heard in open court on 25 and 26 August 2011.

9. On 14 March 2012, Trial Chamber I read out a summary of its judgement. The Chamber found that Thomas Lubanga Dyilo, as the President and Commander-in-Chief of the *Union des patriotes congolais*, was criminally responsible, as a co-perpetrator, for the crimes of enlistment, conscription and use of children under the age of 15 to participate actively in hostilities in the context of an armed conflict, not of an international character, in Ituri between September 2002 and August 2003.

10. In accordance with an order issued on 14 March 2012, submissions from the parties and legal representatives of victims on sentencing were filed between 18 April and 28 May 2012. Two witnesses called by the defence were heard by the Chamber at a hearing held on 13 June 2012.

11. Submissions on reparations were filed between 18 April and 25 May 2012 by the parties, the legal representatives of victims, the Registry, the Office of Public Counsel for Victims, the Trust Fund for Victims and five organizations.

12. On 10 July 2012, Trial Chamber I sentenced Thomas Lubanga Dyilo to 14 years' imprisonment. The decision on the reparations principles and proceedings was issued on 7 August 2012. In total, 114 victims have been authorized to participate in the case.

B. *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui* (situation in the Democratic Republic of the Congo)

13. From 24 November 2009 to 8 December 2012, the prosecution called 24 witnesses and presented 270 pieces of evidence. The defence case of Mr. Ngudjolo was presented from 15 August 2011 to 11 November 2011, during which time 12 witnesses were called to testify and the defence tendered 132 items of evidence. Both accused testified during the presentation of their defence case.

14. Together with the parties and participants to the proceedings, the Chamber conducted a site visit to Bogoro and its surroundings on 18 and 19 January 2012. The visit, supported by the Registry, was the first of its kind ever undertaken by a Chamber of the Court.

15. The presentation of the evidence was formally declared closed on 7 February 2012, following which the Prosecution, the defence and the legal representatives of victims submitted their written closing briefs. The Trial Chamber heard closing oral statements in public between 15 and 23 May 2012. The Chamber issued a total of 130 oral and 450 written decisions during the course of the trial, and 366 victims were authorized to participate in the proceedings. The judgement is expected to be delivered in the third quarter of 2012.

C. *The Prosecutor v. Callixte Mbarushimana* (situation in the Democratic Republic of the Congo)

16. During the confirmation of charges hearing, which was held from 16 to 21 September 2011, 32 victims were authorized to participate in the proceedings. On 16 December 2011, Pre-Trial Chamber I, by majority, declined to confirm the charges against Callixte Mbarushimana. It found that the Prosecution had not provided sufficient evidence to establish that the suspect was individually responsible for the crimes with which he was charged. The majority accordingly decided to release Mr. Mbarushimana from custody. On 20 December 2011, the Appeals Chamber rejected the Prosecution's appeal against the release. Mr. Mbarushimana was subsequently released.

17. On 12 March 2012, after being granted leave by the Pre-Trial Chamber, the Prosecution appealed the decision. The Prosecution's appeal was rejected by the Appeals Chamber on 30 May 2012. The Prosecution may submit a new request for the confirmation of charges against Callixte Mbarushimana if the request is supported by additional evidence.

D. *The Prosecutor v. Bosco Ntaganda* (situation in the Democratic Republic of the Congo)

18. On 13 July 2012, Pre-Trial Chamber II issued a second arrest warrant against Bosco Ntaganda, pursuant to the Prosecutor's application of 14 May 2012, for three counts of crimes against humanity (murder, rape and sexual slavery, and persecution) and four counts of war crimes (murder, attack against the civilian population, rape and sexual slavery, and pillaging) allegedly committed in the Ituri district between 1 September 2002 and the end of September 2003.

E. *The Prosecutor v. Sylvestre Mudacumura* (situation in the Democratic Republic of the Congo)

19. On 13 June 2012, the Prosecutor filed an application for an arrest warrant against Sylvestre Mudacumura. On 13 July 2012, Pre-Trial Chamber II issued a warrant for nine counts of war crimes (murder, mutilation, cruel treatment, torture, outrage upon personal dignity, attack against the civilian population, pillaging, rape and destruction of property) allegedly committed in the Kivu provinces between 20 January 2009 and the end of September 2010.

F. *The Prosecutor v. Jean-Pierre Bemba Gombo* (situation in the Central African Republic)

20. The Prosecution called 40 witnesses between 23 November 2010 and 20 March 2012, including four expert witnesses. Thus far, 2,551 victims have been authorized to participate in the proceedings. Two victims have been authorized to testify and three further victims presented their views and concerns by video link in May and June 2012.

21. The proceedings in the case against Jean-Pierre Bemba Gombo are scheduled to continue, with the presentation of evidence by the defence on 14 August 2012. The defence anticipates calling 59 witnesses who are expected to give testimony within a total time frame of up to 8 months set by the Trial Chamber.

G. *The Prosecutor v. Omar Hassan Ahmad Al Bashir* (situation in Darfur)

22. On 12 and 13 December 2011, Pre-Trial Chamber I issued two decisions, concerning Malawi and Chad, in which it found that the two States parties had failed to cooperate with the Court owing to their failure to arrest and surrender Omar Hassan Ahmad Al Bashir to the Court while he was present on their territory. Finding that "customary international law creates an exception to Head-of-State immunity when international courts seek a Head of State's arrest for the commission of international crimes", the Chamber reiterated that States parties were under the obligation to arrest and surrender Mr. Al Bashir to the Court if he was on their territory. Both decisions were reported to the United Nations Security Council and to the Assembly of States Parties to the Rome Statute of the International Criminal Court.

H. *The Prosecutor v. Abdallah Banda Abakaer Nourain and Saleh Mohammed Jerbo Jamus* (situation in Darfur)

23. On 28 September 2011, Trial Chamber IV decided that, following the agreement reached between the parties as to facts and evidence, the trial would only proceed on the basis of the contested issues.

24. On 6 January 2012, the defence requested a temporary stay of the proceedings, submitting that the political and security situation in Darfur made it impossible for the accused to present an effective defence. Following submissions by the parties and the legal representatives of the victims, a decision on the issue is pending.

25. The Chamber issued a decision on common legal representation of victims on 25 May 2012, confirming the Registrar's choice of common legal representatives in the case. Thus far, 89 victims have been authorized to participate in the case.

26. Because of complex issues arising during trial preparations, the date for the commencement of the trial has not yet been set.

I. *The Prosecutor v. Abdel Raheem Muhammad Hussein* (situation in Darfur)

27. On 2 December 2011, the Prosecutor presented an application for an arrest warrant against Abdel Raheem Muhammad Hussein, currently Minister of National Defense of the Sudan. On 1 March 2012, Pre-Trial Chamber I issued a warrant against Mr. Hussein for war crimes and crimes against humanity allegedly committed in Darfur during 2003 and 2004. The Registry transmitted requests for arrest and surrender to 130 States.

J. *The Prosecutor v. William Samoei Ruto, Henry Kiprono Kosgey and Joshua Arap Sang* (situation in Kenya)

28. On 30 August 2011, the Appeals Chamber, by majority, rejected the appeal of the Government of Kenya against the decision of Pre-Trial Chamber II of 30 May 2011 on the admissibility of the case.

29. The confirmation of charges hearing was held from 1 to 8 September 2011. On 23 January 2012, Pre-Trial Chamber II issued its decision confirming the charges against William Samoei Ruto and Joshua Arap Sang for crimes against humanity, including murder, forcible transfer of population and persecution, allegedly committed in Kenya between December 2007 and January 2008, and declining to confirm the charges against Henry Kiprono Kosgey. The Chamber rejected the defence requests for leave to appeal the decision on the confirmation of the charges against Mr. Ruto and Mr. Sang. On 29 March 2012, the Presidency constituted Trial Chamber V and referred to it the *Ruto and Sang* case.

30. On 24 May 2012, the Appeals Chamber rejected the appeal of Mr. Ruto and Mr. Sang against Pre-Trial Chamber II's finding in the confirmation decision of 23 January 2012 that the Court has jurisdiction to hear the case.

31. On 11 June 2012, Trial Chamber V held the initial status conference in order to set the date for trial. On 9 July 2012, the Chamber issued a decision on the schedule leading up to trial, setting a number of interim deadlines for filings required from the parties before trial and scheduling the commencement of trial for 10 April 2013.

32. As at the reporting date, 327 victims had been authorized to participate through their legal representatives in the proceedings.

K. *The Prosecutor v. Francis Kirimi Muthaura, Uhuru Muigai Kenyatta and Mohammed Hussein Ali* (situation in Kenya)

33. On 30 August 2011, the Appeals Chamber, by majority, rejected the appeal of the Government of Kenya against the decision of Pre-Trial Chamber II of 30 May 2011 on the admissibility of the case.

34. The confirmation of charges hearing was held from 21 September 2011 to 5 October 2011. On 23 January 2012, Pre-Trial Chamber II issued decisions confirming the charges against Francis Kirimi Muthaura and Uhuru Muigai Kenyatta for the crimes against humanity of murder, forcible transfer of population, rape, persecution and other inhumane acts committed in Kenya in January 2008, and declining to confirm the charges against Mohammed Hussein Ali. The Chamber rejected the defence requests for leave to appeal the decision on the confirmation of the charges against Mr. Muthaura and Mr. Kenyatta. On 29 March 2012, the Presidency constituted Trial Chamber V and referred to it the *Muthaura and Kenyatta* case.

35. On 24 May 2012, the Appeals Chamber rejected the appeal of Mr. Muthaura and Mr. Kenyatta against the finding of Pre-Trial Chamber II in its decision of 23 January 2012 confirming that the Court has jurisdiction to hear the case.

36. On 12 June 2012, Trial Chamber V held the initial status conference to set the date for trial. On 9 July 2012, the Chamber issued a decision on the schedule

leading up to trial, setting a number of interim deadlines for filings required from the parties before trial and scheduling the commencement of trial for 11 April 2013.

37. Thus far, 233 victims have been authorized to participate through their legal representatives in the proceedings.

L. *The Prosecutor v. Muammar Mohammed Abu Minyar Gaddafi, Saif Al-Islam Gaddafi and Abdullah Al-Senussi* (situation in Libya)

38. On 22 November 2011, Pre-Trial Chamber I decided to terminate the proceedings against Muammar Mohammed Abu Minyar Gaddafi upon receipt of a death certificate from the Libyan authorities.

39. On 23 November 2011, Pre-Trial Chamber I was informed of the arrest of Saif Al-Islam Gaddafi in Libya. On 6 December 2011, Pre-Trial Chamber I decided to seek information on an urgent basis from the Libyan authorities on a number of issues, including the arrest and surrender of Saif Al-Islam Gaddafi, his legal representation and his state of health.

40. On 23 January 2012, the Libyan authorities indicated that they were willing to facilitate a visit between Saif Al-Islam Gaddafi and the Registry. On 3 February 2012, the Chamber ordered the Registry to make arrangements as soon as possible for a visit between Court personnel and Mr. Gaddafi, including a privileged visit between counsel from the Office of Public Counsel for the Defence and Mr. Gaddafi. The visit took place on 3 March 2012.

41. On 27 April 2012, Pre-Trial Chamber I, taking note of the submission made by the Libyan authorities that they would facilitate access to Saif Al-Islam Gaddafi by his lawyers, requested the Libyan authorities to enable his counsel from the Office of Public Counsel for the Defence to have a privileged visit with him. In addition, Pre-Trial Chamber I found it necessary for representatives of the Registry to also visit Saif Al-Islam Gaddafi in order to further discuss the option of appointing counsel of his own choosing. After the necessary arrangements were made by the Registry, this visit took place on 7 June 2012. On this occasion, four Court personnel, including a counsel from the Office of Public Counsel for the Defence, were detained from 7 June to 2 July 2012 by the Libyan authorities.

42. On 1 May 2012, Libya filed a challenge concerning the admissibility of the case of Saif Al-Islam Gaddafi. The challenge is pending before Pre-Trial Chamber I. In addition, Libya has requested a postponement of the execution of the surrender request concerning Saif Al-Islam Gaddafi that was granted on 1 June 2012.

43. Concerning Abdullah Al-Senussi, the Chamber has received information that he was arrested in March 2012 in Mauritania. A surrender request was sent by the Court to Mauritania on 17 March 2012. Mauritania has not yet replied to that request.

M. *The Prosecutor v. Laurent Gbagbo* (situation in Côte d'Ivoire)

44. On 25 October 2011, the Prosecutor presented an application for an arrest warrant against Laurent Gbagbo. On 23 November 2011, Pre-Trial Chamber III issued a warrant against him for the crimes against humanity of murder, rape and

other forms of sexual violence, persecution and other inhumane acts committed in Côte d'Ivoire between 16 December 2010 and 12 April 2011.

45. Laurent Gbagbo was surrendered to the Court on 30 November 2011 and his first court appearance took place on 5 December 2011.

46. On 5 April 2012, Pre-Trial Chamber III decided to encourage a collective application system for victims wishing to participate in the proceedings in order to expedite the management of applications and enhance the system of participation. On 16 May 2012, the Registry transmitted to the Chamber 63 applications presented by victims to participate in the proceedings, including 6 collective application forms and 57 individual applications.

47. On 2 August 2012, the Chamber postponed the confirmation of charges hearing until the issue of Mr. Gbagbo's fitness to take part in the proceedings is resolved.

N. Outstanding arrest warrants

48. At the time of the submission of the present report, requests for the arrest and surrender of persons subject to arrest warrants issued by the Court are outstanding against 12 individuals:

(a) Uganda: Mr. Joseph Kony, Mr. Vincent Otti, Mr. Okot Odhiambo and Mr. Dominic Ongwen, outstanding since 2005;

(b) Democratic Republic of the Congo: Mr. Bosco Ntaganda, two warrants of arrest, outstanding since 2006 and 2012; and Mr. Sylvestre Mudacumura, outstanding since 2012;

(c) Darfur, the Sudan: Mr. Ahmad Harun and Mr. Ali Kushayb, outstanding since 2007; Mr. Omar Al Bashir, two warrants, outstanding since 2009 and 2010; and Mr. Abdel Raheem Muhammed Hussein, outstanding since 2012;

(d) Libya: Mr. Saif Al-Islam Gaddafi and Mr. Abdullah Al-Senussi, outstanding since 2011.

III. Investigations and preliminary examinations

A. Investigations

1. Situation in the Democratic Republic of the Congo

49. During the reporting period, the Office of the Prosecutor conducted two missions to the Democratic Republic of the Congo to support trials and to address the arguments raised by the defence in the cases of *The Prosecutor v. Thomas Lubanga Dyilo* and of *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*.

50. During the reporting period the Office conducted 15 missions to 7 countries for its third investigation in the Democratic Republic of the Congo, focusing on crimes committed by the *Forces démocratiques de libération du Rwanda* (FDLR) militia in the Kivu provinces in support to the preparation of the confirmation of

charges in the Callixte Mbarushimana case. While the charges brought by the Prosecution against Callixte Mbarushimana were not confirmed, the Prosecution continues its investigation in the region in relation to FDLR, as demonstrated by the arrest warrant issued against Sylvestre Mudacumura on 13 July 2012.

51. The investigation regarding the FDLR militia in the Kivu provinces was conducted in cooperation with several States, including the Democratic Republic of the Congo, France, Germany and Rwanda, in a spirit of positive complementarity. The investigation carried out by the Office of the Prosecutor into alleged crimes committed in the Kivus continues, including in relation to other leaders of FDLR and in relation to other groups.

52. The investigation by the Office of the Prosecutor continued in relation to alleged crimes committed by Bosco Ntaganda, leading to a new arrest warrant issued by the judges on 13 July 2012.

2. Situation in Uganda

53. During the reporting period, the Office of the Prosecutor conducted one mission in relation to investigations into the situation in Uganda.

54. The Office continued to gather information on crimes allegedly committed by the Lord's Resistance Army and to promote action to implement warrants against its leadership. The Office also continued gathering and analysing information related to alleged crimes committed by the Uganda People's Defence Forces. The Office continues to encourage proceedings in relation to both parties to the conflict.

3. Situation in the Central African Republic

55. During the reporting period, the Office of the Prosecutor continued its investigation into the situation in the Central African Republic, conducting a total of 14 missions to three countries for the purposes of, inter alia, meetings with witnesses and following up on information received.

4. Situation in Darfur

56. During the reporting period, the Office of the Prosecutor conducted seven missions to six countries in relation to investigations into the situation in Darfur.

57. In accordance with Security Council resolution 1593 (2005), the Prosecutor presented his fourteenth and fifteenth reports on the situation in Darfur to the Security Council. In his briefings of 15 December 2011 and 5 June 2012, the Prosecutor, inter alia, highlighted the lack of cooperation by the Government of the Sudan and the lack of national proceedings against those responsible for the crimes committed, and recalled the 26 May 2010 Pre-Trial Chamber I decision that the Sudan, in violation of Security Council resolution 1593 (2005), was not cooperating with the Court.

58. The Office continues to monitor and gather information regarding the situation in Darfur. The information collected indicates that crimes against humanity, war crimes and genocide continue to be committed.

5. Situation in Kenya

59. During the reporting period, the Office of the Prosecutor undertook 67 missions to 11 countries in relation to investigations into the situation in Kenya.

60. The Office continued to gather information on the crimes against humanity of murder, deportation or forcible transfer and persecution that were allegedly committed in the town of Turbo, the greater Eldoret area, the town of Kapsabet and Nandi Hills from approximately 30 December 2007 until the end of January 2008.

61. The Office also continued to gather information on the crimes against humanity of murder, deportation or forcible transfer, rape, other inhumane acts and persecution allegedly committed between 24 and 28 January 2008 against the civilian residents of Nakuru and Naivasha, in particular those belonging to the Luo, Luhya and Kalenjin ethnic groups, who were seen as supporters of the Orange Democratic Movement.

62. The Office, in cooperation with a wide range of partners, is monitoring and investigating attempts to expose, intimidate or otherwise tamper with individuals who are perceived as possible witnesses before the Court.

6. Situation in Libya

63. During the reporting period, the Office of the Prosecutor conducted 38 missions to 13 countries in relation to investigations into the situation in Libya.

64. During the reporting period, the Office reported twice to the Security Council on the situation in Libya.

65. In the 2 November 2011 briefing, the Prosecutor reported that Muammar Gaddafi had died on 20 October, but that the Office was galvanizing efforts to ensure that Saif Al-Islam Gaddafi and Abdullah Al-Senussi would face justice. The Prosecutor reiterated his appreciation for the ongoing cooperation of the Libyan authorities in the investigation, noted that the Office was continuing its investigations into gender crimes in Libya, and that its analysis would benefit from the work of the Independent International Commission of Inquiry established by the Human Rights Council.

66. In the 16 May 2012 briefing, the Prosecutor indicated that the findings of the Commission of Inquiry had confirmed the commission of gender crimes, concerning which the Office of the Prosecutor was continuing to collect evidence. He also noted that, according to the report of the Commission of 2 March 2012, thousands of individuals who were allegedly involved in crimes committed by Gaddafi forces were in detention, many still not under the jurisdiction of the national authorities and allegedly subject to mistreatment or torture by rebel forces.

67. On allegations against NATO, the Prosecutor noted the Commission's finding that NATO did not deliberately target civilians in Libya. The Prosecutor further noted that the Office has no jurisdiction to evaluate the proper scope of the NATO mandate in relation to Security Council resolution 1973 (2011), but that the Office is requesting further information about the five incidents identified by the Commission of Inquiry.

68. The Prosecutor noted the Government of Libya's commitment to a comprehensive strategy to address all crimes and end impunity in Libya, and emphasized that it must remain a priority.

7. Situation in Côte d'Ivoire

69. During the reporting period, the Office of the Prosecutor conducted 54 missions to 7 countries for the purpose of, inter alia, collecting evidence, screening and interviewing witnesses, and securing the continued cooperation of its partners. The Office has been focusing on allegations of crimes against humanity committed in violation of articles 7(1)(a), 7(1)(g), 7(1)(h) and 7(1)(k) of the Statute of the Court.

70. The Office is currently focusing its investigative activities on the preparation of the confirmation of charges hearing in the case *The Prosecutor v. Laurent Gbagbo*. The Office also continued its investigation in relation to alleged crimes committed in Côte d'Ivoire by other leaders, covering both sides of the conflict, irrespective of political affiliation.

B. Preliminary examinations

71. The Office of the Prosecutor is responsible for determining whether a situation meets the legal criteria established in the Rome Statute as warranting investigation by the Court. For that purpose, the Office conducts a preliminary examination of all situations brought to its attention based on statutory criteria and the information available. During the reporting period, the Office began a preliminary examination of the situation in Mali, continued preliminary examinations in Afghanistan, Colombia, Georgia, Guinea, Honduras, the Republic of Korea and Nigeria, and concluded its preliminary examination of the situation in Palestine. The Office published a report on its preliminary examination activities on 13 December 2011.

72. The Office continued to analyse information received from various sources alleging the commission of crimes potentially falling within the Court's jurisdiction. From 1 August 2011 until 30 June 2012, the Office received 287 communications relating to article 15 of the Rome Statute, of which 176 were clearly outside the Court's jurisdiction; 28 warranted further analysis; 35 were linked to a situation already under analysis; and 47 were linked to an investigation or prosecution.

1. Afghanistan

73. The Office of the Prosecutor continued to gather and analyse information from multiple sources relating to alleged crimes committed in Afghanistan since 1 May 2003. The Office sought to verify the seriousness of information received relating to a large number of alleged crimes, including killings, torture, attacks on humanitarian targets and the United Nations, attacks on protected objects and the recruitment of child soldiers. The Office has encountered challenges in obtaining the detailed information required to conduct a proper legal assessment of each reported incident and to attribute responsibility to specific perpetrators.

74. As part of its policy on positive complementarity, the Office has taken steps to encourage key actors to consider and promote accountability mechanisms within areas under their purview. The Office maintains contact with experts, civil society

organizations, Afghan Government officials, United Nations officials and contributing States to the International Security Assistance Force.

2. Colombia

75. The Office of the Prosecutor continued to gather and analyse information on national investigations and prosecutions in Colombia, in particular against leaders of illegal armed groups, senior paramilitary leaders, police and army officials and politicians with alleged links to armed groups. In each case, the Office seeks to determine whether the proceedings focus on or include persons bearing the greatest responsibility for the crimes committed, and whether the proceedings are genuine and in accordance with article 17 of the Rome Statute. The Office also gathered and analysed information related to the alleged commission of additional crimes in Colombia, in particular whether various groups may be responsible for committing war crimes since 1 November 2009, the date of entry into force of the Court's jurisdiction over war crimes committed on the territory of Colombia or by its nationals.

76. The Office has been in close contact with the Colombian authorities, who have provided a significant volume of information on national proceedings. The Office has also been in contact with various international non-governmental organizations working on the situation in Colombia. In the context of the ongoing examination, the Office continues to engage the Colombian authorities, in accordance with its positive approach to complementarity, and to encourage other States, international organizations and civil society to do so as well.

3. Georgia

77. The Office of the Prosecutor continued to gather and analyse information regarding progress made in national proceedings related to alleged crimes committed during the August 2008 conflict in Georgia. The investigative committee of the Russian Federation and the chief prosecutor of Georgia have been conducting separate investigations into incidents that could constitute crimes under the jurisdiction of the Court. The proceedings have been the subject of regular consultations between the Office and the competent national authorities, with a view to assessing whether they are actually willing and able to bring the perpetrators of crimes to justice. Both authorities have submitted a significant amount of information and evidence to the Office in the progress made in these investigations, the methodology followed and their preliminary findings.

4. Guinea

78. In accordance with its policy on positive complementarity, the Office of the Prosecutor has sought to encourage national proceedings to bring to account those bearing the greatest responsibility for the alleged crimes committed on 28 September 2009 in Conakry. On 1 February 2012, judicial authorities in Guinea indicted Lieutenant Colonel Tiegboro Camara, Minister for the Special Services, Drug Control and Organized Crime Units, for the crimes committed on 28 September 2009. The indictment came after four other indictments issued against other suspected perpetrators.

79. The Office conducted two missions to Guinea, in October 2011 and April 2012, in order to examine progress made in the investigation being carried out by judges

appointed by the national Government. The former Deputy Prosecutor, as well as senior officials of the Office, met with Government officials, representatives of the judiciary and civil society and victims and victims' associations.

5. Honduras

80. The Office of the Prosecutor continued to gather and analyse information in order to determine whether the alleged human rights violations following the 28 June 2009 coup d'état constitute crimes under the jurisdiction of the Court. The Office has gathered information on the situation in Honduras from multiple sources, including the Truth and Reconciliation Commission, the Inter-American Commission of Human Rights, the Office of the High Commissioner for Human Rights (OHCHR) as well as international and national non-governmental organizations. In October 2011, representatives of the Office met with the Attorney General, the Human Rights Attorney, the General Prosecutor, the Sub-Secretary of Justice and the Sub-Secretary of Human Rights in Tegucigalpa.

6. Palestine

81. On 3 April 2012 the Office of the Prosecutor made public its determination on whether the declaration lodged by the Palestinian National Authority under article 12(3) of the Rome Statute on 22 January 2009 accepting jurisdiction of the Court meets its statutory requirements.

82. In interpreting and applying article 12 of the Rome Statute, the Office assessed that it is for the relevant bodies at the United Nations or the Assembly of States Parties to the Rome Statute to make the legal determination as to whether Palestine qualifies as a State for the purpose of acceding to the Rome Statute and thereby enabling the exercise of jurisdiction by the Court. In the view of the Office of the Prosecutor, the Rome Statute gives it no authority to adopt a method to define the term "State" under article 12(3), which would be at variance with that established for the purpose of article 12(1).

83. In the future, the Office could consider allegations of crimes committed in Palestine, should competent organs of the United Nations, or possibly the Assembly of States Parties to the Rome Statute, resolve the legal issue relevant to an assessment of article 12, or should the Security Council make a referral providing jurisdiction.

7. Nigeria

84. The Office of the Prosecutor has been focusing on alleged crimes committed in the Delta region of central Nigeria (in particular Plateau State and Kaduna State) and more recently in northern Nigeria and Abuja (in relation to attacks attributed to the Islamist militant group, Boko Haram). The Office is analysing whether the alleged crimes fall within the Court's subject-matter jurisdiction. The Office has engaged constructively with the Nigerian authorities, as well as with local and international non-governmental organizations. The Prosecutor and senior officials from the Office visited Nigeria in July 2012 and met with President Goodluck Jonathan, the Federal Justice Minister and Attorney General, the Inspector General of Police, officials from Plateau and Kaduna States as well as the various panels of investigations on sectarian violence in Nigeria.

8. Republic of Korea

85. The preliminary examination focused on two incidents: (a) the shelling of Yeonpyeong Island on 23 November 2010; and (b) the sinking of the Republic of Korea warship *Cheonan* on 26 March 2010.

86. The Office of the Prosecutor has continued to seek additional information from relevant sources, focusing its activities on ascertaining factual issues that are necessary to determine whether the two incidents could amount to war crimes under the Rome Statute, and whether they derive from a policy. The Office has considered, in particular, the findings of international investigations into the two incidents, including two United Nations reports on the sinking of the warship *Cheonan* and the attack on Yeonpyeong Island.

9. Mali

87. On 18 July 2012, the Government of Mali transmitted a letter referring "the situation in Mali since January 2012" to the Office of the Prosecutor and requesting an investigation to determine whether one or more persons should be charged for crimes committed. The Government of Mali also provided documentation in support of the referral. The Office initiated a preliminary examination to assess whether the Rome Statute criteria for the opening of an investigation are fulfilled. A public decision will be made in due course.

IV. International cooperation

A. Cooperation with the United Nations

88. The New York liaison office of the International Criminal Court continued to facilitate and promote cooperation between the Court and the United Nations and its funds, programmes and agencies, as well as between the Court and Permanent and Observer Missions to the United Nations. The Head of the New York office participated, when possible, as an observer at meetings of the Security Council and of the General Assembly on the work of the Court. The office also facilitated the visits of senior Court officials, followed developments of relevance to the Court, regularly updated the Secretariat of the United Nations and Permanent Missions on judicial developments at the Court and transmitted the Court's judicial notifications to the Secretary-General and the Security Council.

89. The heads of the organs of the Court met with several senior United Nations officials during the reporting period, including the Secretary-General, the Deputy Secretary-General and the President of the General Assembly, as well as with permanent representatives to the United Nations, in order to discuss the relationship between the Court and the United Nations and numerous matters of cooperation. The President addressed the Assembly on 26 October 2011 and the Prosecutor briefed the Security Council on four occasions regarding the situations in Darfur and Libya. In addition, the Court's principals received visits at the seat of the Court from the Special Representative of the Secretary-General for Children and Armed Conflict, the Assistant Secretary-General of the Office of Legal Affairs, the Special Adviser on the Prevention of Genocide and the Special Representative for the Democratic Republic of the Congo.

90. The annual round table between the United Nations and the Court took place in New York, on 8 and 9 December 2011. Issues including the disclosure of United Nations documents to the Court and cooperation with the defence teams were discussed. The Office of the Prosecutor also conducted a series of lessons-learned discussions with Departments of the Secretariat with regard to situations under investigation. In December 2011, at the tenth session of the Assembly of States Parties to the Rome Statute, the International Centre for Transitional Justice organized a follow-up side event, sponsored by the Rule of Law Assistance Unit, on the issue of complementarity and the importance of the continuation of consultations between the United Nations, its agencies and the Court.

91. The Court benefited from the logistical assistance provided by the United Nations in the countries where it is carrying out investigations, including through the provision of 257 United Nations flights by United Nations missions, including the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO) and the United Nations Operation in Côte d'Ivoire (UNOCI), and by the United Nations Office at Nairobi in connection with its activities in the Democratic Republic of the Congo, Kenya and Côte d'Ivoire.

92. The Trust Fund for Victims also benefits from the support of the United Nations and continues to work closely with different United Nations agencies, including in capacity-building activities, providing assistance to victims and fostering synergies.

93. During the reporting period, the parties to the United Nations Inter-Agency Security Management Network, which includes the Court, were involved in revising the existing memorandum of understanding to reflect the modified template approved by the Network in 2010; however this is yet to be concluded. The Court is included in the United Nations security and safety arrangements in all areas of the Court's operations and has liaised closely with United Nations security officials in each of these locations.

94. On 20 January 2012, the Office of the Prosecutor concluded a memorandum of understanding concerning cooperation with UNOCI. In March 2012, the Registry sent a draft memorandum of understanding on cooperation between UNOCI and the Court, encompassing the memorandum concluded by the Office, for consideration by the United Nations. The memorandum is in the process of finalization.

95. The Court has not yet signed a memorandum of understanding creating a framework for the necessary operational arrangements for the Court in Libya. The importance of the legal protection of the Court's staff when travelling to situation countries, as referred by the Security Council, was highlighted during the detention of four staff members of the Court in Zintan from 7 June to 2 July 2012. In this regard, the Court wishes to express its appreciation for the press statement of the Security Council, dated 15 June 2012 and the support of the Special Representative of the Secretary-General to Libya and other United Nations officials, as well as several Member States. The Court is continuing to work with the Libyan authorities on judicial cooperation issues and the ongoing investigations against its four staff members.

96. The Court is in regular contact with the Office of Legal Affairs, which acts as the entry point for requests for assistance transmitted by the Registry (including requests from the Chambers and the Defence) and the Office of the Prosecutor. In

addition, the Office of Legal Affairs facilitates the transmission of notifications to the Security Council in situations referred by the latter. At the request of the Court, the Security Council provided assistance in order to lift the travel ban against Mr. Mbarushimana, enabling him to go back to France after the Chamber decided not to confirm the charges against him in December 2011.

97. Finally, the United Nations provided facilities and services for the tenth session of the Assembly of States Parties to the Rome Statute, which was held at Headquarters in New York from 12 to 21 December 2011.

B. Cooperation with and assistance from States, other international organizations and civil society

98. In order to maintain support to and increase the understanding of the work of the Court, the heads of the three organs of the Court held numerous high-level meetings with representatives of member States at the seat of the Court in The Hague and paid official visits to a number of countries worldwide. The President of the Court met with a number of senior State figures, including the Presidents of Bolivia (Plurinational State of), Botswana and Mali. The former and current Prosecutors made several visits to Government officials in several African countries, including Côte d'Ivoire, Senegal, Nigeria, Libya and Tunisia. Officials of the Office of the Prosecutor paid visits to European countries, including Norway, Estonia and France, and had meetings with European Government officials. The visits paved the way to strengthening the relationship between the Court and the respective States parties in areas of cooperation and assistance. In addition, on 9 February 2012, the Office of the Prosecutor held its second informal meeting for Ambassadors of interested States, with a view to providing information in relation to the activities of the Office in the coming months, its recently issued report on preliminary examinations and its work on the transition to the new Prosecutor, as well as on lessons learned. The Registrar focused her visits on the situation countries, including Libya and Côte d'Ivoire, where she signed a memorandum of understanding on behalf of the Court with the Ivorian authorities.

99. The Court continues to request the assistance of States in fulfilling its mandate. During the reporting period, the Registry transmitted 496 requests for cooperation, including 48 requests to States not party to the Statute, and 13 requests to international organizations. The Office of the Prosecutor sent 287 requests for assistance to States parties, States not party to the Statute, international and regional organizations and others. The execution rate at the end of the reporting period stood at 72 per cent; most of the pending requests having been issued recently.

100. Since the first technical meeting between the African Union and the Court, which took place during the last reporting period, the Court has continued to interact regularly with the African Union. The second technical meeting is to take place during the second half of 2012 with the financial support of the International Organization of la Francophonie.

101. During the reporting period, the Court had various exchanges with the European Union. The President spoke at the European Parliament and held several meetings in Brussels, including with the President of the European Parliament, the Executive Secretary-General of the European External Action Service, the Development Commissioner of the European Union and the Chair of the

Subcommittee on Human Rights. The Office of the Prosecutor continued to meet on a regular basis with representatives from the Action Service, as well as with members of the European Parliament; gave various briefings to members of the Action Service, including during training courses; and gave presentations to the European Union working groups on public international law, the Middle East and Africa. The Court is grateful to the European Commission, which financially supported the seminar and training of counsel, the legal-tools project and the placement of interns and visiting professionals.

102. Following increased cooperation with the League of Arab States during the last reporting period, and since the Doha high-level conference on the International Criminal Court and the Arab region on 24 and 25 May 2011, the Office of the Prosecutor has ensured continued interaction at the working level with the Office of the Secretary-General of the League of Arab States, following on the Prosecutor's first meeting with the new Secretary-General, Nabil Al Araby, in March 2011. In September 2011, the Court organized a seminar in Tunisia with the support of the International Organization of la Francophonie and France to increase the understanding of the Rome Statute in the Maghreb and the Middle East.

103. The Office of the Prosecutor has continued to interact on a regular basis with the Organization of American States. The Working meeting between the two bodies will likely take place in the second half of 2012. In addition, on 25 April 2012, the Office concluded a memorandum of understanding with the Inter-American Commission on Human Rights aiming at strengthening the mutual cooperation and assistance.

104. With the support of Australia, New Zealand and the Commonwealth Secretariat, the Court's principals participated in a meeting with Pacific Island States to discuss ratification and implementation of the Rome Statute in the region.

105. The Court has negotiated a memorandum of understanding with the International Organization of la Francophonie, due to be signed in September 2012, to promote exchanging information, raising awareness and support for the capacity-building of national jurisdictions.

106. During the reporting period, Mali concluded an agreement on the enforcement of sentences with the Court. Mali is the first African State to sign such an agreement.

107. Despite the Registry's continued efforts to raise awareness on the importance of witness relocation agreements with States, and despite the voluntary contributions of States to the special fund for witness relocation, no new agreements were concluded during the reporting period. This matter, which affects the capacity of the Court to protect witnesses and to conduct its proceedings, remains an urgent priority for the Court.

108. The Court grateful for the voluntary contributions from its States parties (Andorra, Australia, Austria, Belgium, Colombia, the Czech Republic, Finland, France, Germany, Ireland, Italy, Liechtenstein, Luxembourg, the Netherlands, Poland, South Korea, Spain, Switzerland and the United Kingdom of Great Britain and Northern Ireland), during the reporting period to the different funds, seminars, operations and projects of the Court.

109. The Court held one diplomatic briefing in The Hague to update the diplomatic community on the work of the Court. Two strategic-level meetings were held

between the Court and non-governmental organizations (NGOs) in The Hague, in addition to regular contacts between the Court and representatives of civil society, who continued to provide important support to the Court.

V. Institutional developments

A. Elections

110. At its tenth session, the Assembly of States Parties to the Rome Statute elected judges Miriam Defensor-Santiago (the Philippines), Howard Morrison (United Kingdom), Anthony T. A. Carmona (Trinidad and Tobago), Olga V. Herrera Carbuccia (Dominican Republic), Robert Fremr (Czech Republic) and Chile Eboe-Osuji (Nigeria) to the Court for a term of nine years. Their terms of office commenced on 11 March 2012.

111. The Assembly of States Parties to the Rome Statute also elected Ms. B. Fatou Bensouda (The Gambia) as Prosecutor by consensus, for a nine-year term. Ms. Bensouda assumed office on 15 June 2012.

112. On 11 March 2012, Judge Sang-Hyun Song (Republic of Korea) was re-elected as President of the Court and Judge Sanji Mmasenono Monageng (Botswana) and Judge Cuno Jakob Tarfusser (Italy) were elected first and second Vice-Presidents, respectively. They will serve for a period of three years.

113. At its tenth session, the Assembly of States Parties to the Rome Statute elected Ambassador Tiina Intelmann (Estonia) as President of the Assembly by acclamation for the tenth to twelfth sessions.

B. Assistance to the Special Court for Sierra Leone and other tribunals

114. The Court continued to provide support to the Special Court for Sierra Leone during the reporting period. This assistance entails technical, logistical and administrative support as well as the provision of ad hoc assistance during press conferences, including by the temporary release of staff members on a reimbursable basis. In addition, the Court's detention centre continues to host Charles Taylor, the former President of Sierra Leone.

115. The Court also provides technical assistance to other tribunals, including the Special Tribunal for Lebanon. The Court remains in close contact with other tribunals such as the ad hoc tribunals for the exchange of experts opinions or in the context of inter-library exchanges with the International Court of Justice, the International Tribunal for the Former Yugoslavia, the International Criminal Tribunal for Rwanda, the United Nations Legal Library and the Extraordinary Chambers in the Courts of Cambodia.

VI. Conclusion

116. As it reached its tenth anniversary, the Court made considerable progress, most significantly with the issuance of its first judgement and sentence.

117. Strong and consistent support of States and of intergovernmental organizations, including the United Nations, remains crucial to the Court's ability to carry out its independent mandate aimed at ending impunity for the gravest crimes of concern to the international community. This includes the implementation of the Court's requests for cooperation, in particular regarding the outstanding arrest warrants, the allocation of adequate resources, public and diplomatic support for the Court's activities and other forms of assistance, especially regarding the protection of victims and witnesses.